SSC RPC Springfield-Sangamon County Regional Planning Commission

PLANNING BULLETIN

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SUBJECT: Spot Zoning

SERVICE RELATIONSHIP: Commission Zoning Review

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Considering Spot Zoning

One of the staff responsibilities of the Springfield-Sangamon County Regional Planning Commission (SSCRPC) is to review zoning petitions submitted to the Springfield Planning and Zoning Commission and the Sangamon County Zoning Board of Appeals and provide an objective professional opinion and recommendation concerning the zoning relief requested. In reaching an opinion, one of the items to be considered by SSCRPC staff is whether or not the change in zoning requested would constitute what is often called *spot zoning*. This consideration is important because while spot zoning is not *ipso facto* illegal, it is considered "the very antithesis of planned zoning"[1] and can open a municipality to legal challenge[2].

Spot zoning can arise in cases involving zoning map amendments, as the common spot zoning situation is one in which an amendment to the zoning map is requested by a property owner who seeks a use not allowed under the existing zoning district[3]. However, legal analysis of spot zoning court cases indicates no distinction between cases in which a zoning district has been reclassified and those where a new use is requested without a district reclassification[4]. This would lead one to believe that spot zoning can occur in cases where a use variance or other relief is granted without map amendment.

Since a review for spot zoning is a regular component of zoning case analysis, it was believed advisable to provide some background that might help with definition and identification. In doing so we would note that this SSCRPC *Planning Bulletin* is not intended to provide a legal review or a legal opinion, but is simply provided for staff informational purposes. It may also help petitioners and the public better understand why SSCRPC staff might find or not find spot zoning in a particular zoning case.

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[1] *Griswold v. City of Homer,* (10/25/96), 925 P 2d 1015.
[2] See, for example, *Bossman v. Village of Riverton,* 291 Ill. App. 3d. 769, 775 (1997).
[3] Anderson, R. M. (1986). *American Law of Zoning*, 3rd edition. Sec. 5.12. P. 358.
[4] Ibid.

The Definition and Nature of Spot Zoning

As Cope notes in his Illinois zoning handbook, "Spot zoning is one of those creatures of the law which is often used as an epithet in regard to a myriad of zoning wrongs".[5] Cope defines spot zoning as involving "the singling out of a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of the property and to the detriment of other owners", and being "not in conformity with the plan of development of the community".

This definition is similar to others. The Alaska Supreme Court, for example, quotes a New Jersey case, *Jones v. Zoning Board of Adjustment of Long Beach*[6] , writing that:

> The "classical" definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners".[7]

As the Alaska court noted, courts have developed numerous variations of this definition, but these variations only differ in minor ways, describing any zoning amendment "which 'reclassifies a small parcel in a manner inconsistent with existing zoning patterns, for the benefit of the owner and to the detriment of the community, or without any substantial public purpose' ", as potentially representing spot zoning.

Ziegler also comments on the nature and factors of spot zoning, writing:

> Faced with an allegation of spot zoning, courts determine first whether the rezoning is compatible with the comprehensive plan or, where no plan exists, with surrounding uses. Courts then examine the degree of public benefit gained and the characteristics of land, including parcel size and other factors indicating that any reclassification should have embraced a larger area containing the subject parcel rather than that parcel alone. No one particular characteristic associated with spot zoning, except a failure to comply with at least the spirit of a comprehensive plan, is necessarily fatal to the amendment. Spot zoning analysis depends primarily on the facts and circumstances of the particular case. Therefore the criteria are flexible and provide for judicial balancing of interests.[8]

So it appears that while a "bright line" does not exist for the determination of inappropriate spot zoning, some factors are rather consistent: 1) a rezoning that is inconsistent with the community's comprehensive plan and the land use characteristics of the surrounding area, 2) that involves a small tract or area, and 3) which provides the property owner seeking the rezoning with a private benefit not off-set by a public benefit, or even a private benefit that is detrimental to the surrounding area.

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[5] Cope, R.S. (2005). *Zoning Handbook for Municipal Officials with Suggested Forms*. P. 117. Illinois Municipal League.
[6] *Jones v. Zoning Board of Adjustment of Long Beach* [108 A.2d 498 (N.J. Super. 1954)]
[7] *Griswold v. City of Homer,* (10/25/96), 925 P 2d 1015.
[8] Ziegler, E.H. (1995). *Rathkoph's The Law of Zoning and Planning* , 4th ed. Sec. 28.01, at 28-3.

Spot Zoning as Defined in Ordinance

While the Springfield and Sangamon County zoning ordinances do not define spot zoning in code, it has been addressed in code and by guidance in other jurisdictions. One finds these definitions addressing factors very similar to the three mentioned above.

For example, the American Planning Association's *Planners Dictionary* offers five examples.

Coral Gables, Florida, provides the following language:

> [A] change in district boundaries, variances, and other amendments to the zoning code and use and area maps that violate sound principles of zoning and are characterized by the following:
>
> (a) Individuals seek to have property rezoned for their private use.
> (b) Usually the amount of land involved is small and limited to one or two ownerships.
> (c) The proposed rezoning would give privileges not generally extended to property similarly located in the area.
> (d) Applications usually show little or no evidence of, or interest in, consideration of the general welfare of the public, the effect on surrounding property (including adequate buffers), whether all uses permitted in the classification sought are appropriate in the locations proposed, or conformity to the comprehensive plan or to comprehensive planning principles (including alterations to the population density patterns and increase of load on utilities, schools and traffic.)

Hot Springs, Arkansas, defines spot zoning in this way:

> The zoning of a small land area for a use which differs measurably from the zoned land use surrounding this area. Land may not merely be so zoned in the interest of an individual or small group, but must be in the general public interest. Such zoning does not conform to the future land use plan and is not otherwise necessary in order to protect the health, safety, welfare, or morals of the community.

Temple, Texas, offers this definition:

> Rezoning a lot or parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive plan.

Norfolk, Nebraska, calls spot zoning:

> An arbitrary zoning or rezoning of a small tract of land, usually surrounded by other uses or zoning categories that are of a markedly or substantially different intensity, that is not consistent with the comprehensive land use plan, and that primarily promotes the private interest of the owner rather than the general welfare.

And the Wisconsin Department of Natural Resources provides a state agency definition of spot zoning as:

> A change in the zoning code or area maps that is applicable to no more than a few parcels and generally regarded as undesirable or illegal because it violates equal treatment and sound planning principles.

General Consideration in Case Law of Other States

One can also see these factors considered in case law from various states.

The previously mentioned 1996 case heard by the Alaska Supreme Court, *Griswold v. City of Homer*[9], is instructive as it represents the first time that court had considered the matter of spot zoning, causing the court to in part draw its decision from a number of cases arising in other states. This case is also useful in that since it was the first time this court addressed the question, some detailed analysis of the relevant factors associated with spot zoning was provided.

In this case the court decided the matter by considering three factors similar to those previously mentioned: 1) the consistency of the zoning amendment with the municipality's comprehensive plan; 2) the benefits and detriments of the amendment to the owners of the property being rezoned, the adjacent property owners and the community at-large; and 3) the size of the area subject to the change in zoning.

Consistency with the comprehensive plan was considered important as the plan was seen as an indication that the zoning action requested had a rational basis and was not an arbitrary exercise of the municipality's zoning power. Even so, staff should recognize, as this court did, that just as an ordinance that complies with a comprehensive plan may still result in an arbitrary exercise of zoning powers, nonconformance with the plan does not make the zoning *ipso facto* illegal[10].

In terms of benefits or detriments, in *Griswold* the court found the most important factor in determining spot zoning to be whether or not the amendment provides a benefit to the public rather than just to the property owner seeking zoning relief. In part the court relied on Anderson's and Ziegler's analysis, specifically noting Ziegler's contention that calling an amendment intended only to benefit the owner of a rezoned tract the "classic case" of spot zoning. [11]

However, this court noted that "Courts generally do not assume that a zoning amendment is primarily for the benefit of a landowner merely because the amendment was adopted at the request of the landowner", as, "[i]f the owner's benefit is merely incidental to the general community's benefit, the amendment will be upheld." The question becomes one of whether or not the rezoning is assessed as being solely to the benefit of the landowner, particularly if the action would be detrimental to other owners or the public at-large. This could include property owners in similar parcels or situations, as the court opined addressing the specific case before it:

> This desire to accommodate the needs of a businessman who had been in the community for decades is understandable. Nevertheless, small-parcel zoning designed merely to benefit one owner constitutes unwarranted discrimination and arbitrary decision-making, unless the ordinance amendment is designed to achieve the statutory objectives of

[9] *Griswold v. Homer*, op cit.
[10] *Watson v. Town Council of Bernalillo*, 805 P.2d 641, 645 (N.M. App. 1991); *Griswold v. City of Homer*, op cit.
[11] Ziegler, Sec. 28.03, Sec. 28.04, at 28-19.

> the City's own zoning scheme, even where the purpose of the change is to bring a nonconforming use into conformance or allow it to expand. [see Speakman v. Mayor of N. Plainfield, 84 A.2d 715, 718-719 (N.J. 1951)]. Otherwise, the City would be forced either to discriminate arbitrarily among landowners seeking relaxed restrictions or to abandon the concept of planned zoning altogether.[12]

The relationship of parcel size to a determination of spot zoning is less clear. In *Griswold* the court said that the relationship between the size of the reclassification and a finding of spot zoning is "symptomatic rather than causal". We interpret this to mean that while the size of the parcel in question may be indicative of a situation in which spot zoning might occur – i.e. it is not consistent with the city's land use plan or zoning objectives and is for the benefit of an individual property owner rather than the public at-large – it is not in-and-of-itself a cause of the spot zoning, but a reflection of it. So in reviewing a case to determine whether or not it constitutes spot zoning, the size of the area being rezoned should not be given greater significance than other factors.

The court additionally found that, "A parcel cannot be too large per se to preclude a finding of spot zoning, nor can it be so small that it mandates a finding of spot zoning". While the court mentioned analysis by Anderson that reclassifications of parcels under three acres are nearly always perceived as invalid and those over 13 acres valid, they also cite a case from Washington State where spot zoning was found involving 635 acres in an area of 7,680 acres.[13] It appears, then, that consideration must be given to the size of the parcel in context with the size of the area it might affect, its effect on consistency of application of the municipality's land use plan and zoning objectives, and the beneficial purpose to the community that it demonstrates (benefit to the public versus benefit to the individual property owner seeking the zoning relief).

Related to size as an element of spot zoning, and while we often talk about zoning in regard to individual parcels or properties, the court in *Griswold* also reported that a rezoning of more than one parcel does not eliminate the possibility of spot zoning as other courts have invalidated zoning amendments after finding that a multiple parcel rezoning was simply a subterfuge meant to obscure the actual purpose of providing special treatment for a particular landowner.[14] So, and depending upon the nature of the case, multiple parcel cases could involve questionable spot zoning.

Consideration of Spot Zoning by Illinois Courts

Although we found the above opinion of the Alaska Supreme Court in *Griswold* instructive, it does not speak for the Illinois courts. However, we found very similar opinions arising in Illinois court cases.

For example, and in support of his definition of spot zoning, Cope cites *Lancaster Development Ltd. v. Village of River Forest*[15], where an Illinois court defined spot zoning in this way:

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[12] *Griswold*, op cit.
[13] *Chrobuck v. Snohomish County*, 480 P.2d 489, 497 (Wash. 1971).
[14] *Atherton v. Selectmen of Bourne*, 149 N.E.2d 232, 235 (Mass. 1958).
[15] *Lancaster Development Ltd. v. Village of River Forest*, 84 Ill. App. 2d 395, 401-402, 228 N.E.2d 526 (1st Dist. 1967).

> For an ordinance to constitute spot zoning, two requisites must coexist: First, a change of zone applicable only to a small area and, second, a change which is out of harmony with comprehensive planning for the good of the community.[16]

Three criteria are again implied by this statement as being relevant to a finding of spot zoning: size of area, inconsistency with comprehensive plan, and lack of public benefit.

The nature of spot zoning was also addressed in a later case, *Goffinet v. County of Christian*[17]. Cope reports that in this case:

> …the court held in evaluating whether a zoning amendment constituted spot zoning that the "test was to determine whether the change was in harmony with a comprehensive plan for the use of the property in the locality, and the size of the parcel would only be one factor to consider."[18]

In this case the court also pointed out that the Illinois Supreme Court had previously held (citing *Fifteen Fifty North State Building Corp. v. City of Chicago*[19]) that it would not declare every classification of a single tract void *ipso facto*, though the court opined that "it is true that inconsistent zoning of small parcels is not to be encouraged".

While these cases again do not provide the "bright line" SSCRPC staff might seek in determining the presence or absence of spot zoning, they do appear to provide two points of departure. The first is that the zoning relief sought for the parcel or parcels in question is not in conformity or harmony with a local comprehensive plan, and the second is that the size of the parcel or parcels is a factor. This is generally consistent with the definitions and conditions noted above.

Additional guidance may be drawn from a more recent case: *Bossman v. Village of Riverton*[20]. In this case, a group of residential property owners brought action against the village arguing, among other things, that the rezoning of residential property for a convenience store constituted illegal spot zoning. The trial court found for the village, that the rezoning did not constitute spot zoning, but this ruling was over-turned on appeal.

In addressing the *Bossman* case, the appeals court defined spot zoning similar to that in previous decisions, as:

> …a change in zoning applied only to a small area, which is out of harmony with comprehensive planning for the good of the community; zoning that would violate a zoning pattern that is homogeneous, compact and uniform.[21]

We draw the reader's attention to the court's consideration of a "homogeneous, compact and uniform" zoning pattern. The implication is that should a community not provide such a pattern in the area under consideration, a finding of spot zoning would be more difficult. The nature of a

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[16] Cope, op cit.
[17] *Goffinet v. County of Christian*, 65 Ill. 2d 40, 54, 357 N.E.2d 442 (1976).
[18] Cope, Op cit.
[19] *Fifteen Fifty North State Building Corp. v. City of Chicago*, 15 Ill. 2d 408, 418-419, 155 N.E.2d 97 (1958).
[20] *Bossman v. Village of Riverton*, 291 Ill. App. 3d. 769, 775 (1997).
[21] *Bossman, op cit*.

"homogeneous, compact and uniform" zoning pattern can also be drawn from *Bossman*. The court opined that:

> It would be difficult to find spot zoning in an area where conflicting uses were haphazardly mixed. Such mixing may exist either because little thought was given to the establishment of the districts or because other uses over time have been allowed to invade the districts. Nevertheless, the existence of a formal comprehensive plan is not essential to a finding of spot zoning. What is important is that the community in question has given care and consideration to the use and development of the land within its boundaries…Of paramount importance is whether the subject property is zoned in conformity with surrounding existing uses and whether those uses are uniform and established…The existence of a comprehensive plan may justify what would otherwise be spot zoning.

The court in *Bossman* also drew support from the opinion in the *Fifteen Fifty North State Building Corp.* case regarding parcel size, saying:

> This does not mean that every reclassification of a single tract is void ipso facto; rather, it must be determined whether such a change is in harmony with a comprehensive plan for orderly utilization of property in the locality. The size of the rezoned tract or area is merely one factor to consider.

In *Bossman* the court also provided an example in which a change in the zoning of a small tract or area might not constitute spot zoning:

> Sometimes the original zoning ordinance has made a mistake with regard to a single tract. Bringing that tract into harmony with the surrounding property is not spot zoning, or said another way, is not illegal spot zoning. However, the power to zone or rezone cannot be exercised to satisfy the individual desires of a few. *Cosmopolitan National Bank v. City of Chicago*, 27 Ill. 2d 578, 584-85, 190 N.E.2d 352, 356 (1963) (amendatory ordinance void where no change in general character or existing uses in neighborhood).

Addressing a separate argument, the court in *Bossman* also appears to find support for the contention made by Cope that spot zoning implies a benefit given to one property owner to the detriment of surrounding owners. The court states in its opinion:

> The inference cannot be drawn from these cases that spot zoning stands on equal footing with other zoning. "An amendatory zoning ordinance cannot be sustained if the evidence fails to show that it was passed for the public good, but instead tends to show that it was passed in deference to the wishes of certain individuals." Trust Co. , 408 Ill. At 100-01, 96 N.E. 2d at 504-05.[22]

[22] See *Trust Co. v. City of Chicago*, 408 Ill. 91, 100, 96 N.E.2d 499, 504 (1951).

In Considering Spot Zoning

While these cases do not provide a checklist that would indicate the presence or absence of spot zoning in each individual case, we should note that the factors identified by the courts and legal analysts reported above are not dissimilar from factors that are normally taken into account in the SSCRPC staff review of a zoning petition. For example, SSCRPC staff would typically review a case to determine consistency with the land use plan, relationship to trends in the area, impact on surrounding properties, consistency with previous precedents and cases, and the like.

But based upon our review, we believe that staff should give consideration to the following questions in making a determination about whether a zoning change might constitute spot zoning.

- **Is the zoning relief requested consistent with the municipality's comprehensive plan and does it represent a use that is not totally different from or in conflict with that of the surrounding area?**

  Along with comparing the requested relief to the planning factors, goals and land uses for the area presented in the approved comprehensive plan, rendering such a determination would also typically include a consideration of the request in light of the land use characteristics and zoning in the surrounding area so as to determine whether or not the zoning relief requested would violate a zoning pattern that is homogeneous, compact or uniform.

  If the zoning of the surrounding area does not appear to be reasonably homogeneous, compact and uniform, this should be taken into account. Staff should realize, however, that both Springfield and Sangamon County use what is often called "Euclidian zoning". This approach establishes "buffers" between the intensity of use in various districts, so it is possible that the larger the geographic area under review, the more likely that it will include multiple zoning districts. The use of different zoning districts in an area may lead one to believe on casual inspection that its zoning is not homogeneous or uniform, but it may well be if the differences in zoning classification is to provide for buffering between uses. This means that a change in zoning of a small parcel may have a public benefit if it provides a buffering of uses, and not be considered spot zoning. Equally, the simple fact that adjacent property offers multiple different zoning designations may still be indicative of homogenous and uniform zoning if that different zoning is intended to provide a purpose consistent with good land use and zoning principles.

  Staff should also recognize that on occasion the rezoning of a "spot" may be appropriate if the effect is to correct errors in the comprehensive plan or allow for additional uniformity and compactness of zoning in the area, thereby improving the zoning map. It may also be appropriate if such change has occurred in the area that the plan is no longer a valid demonstration of the community's land use and zoning principles or would represent a rational and reasonable accommodation of the plan.

  As the purpose for consideration of the comprehensive plan is intended to demonstrate that the zoning action is rationally and reasonably related to the municipality's zoning policies for the area, it would also be reasonable to consider the requested relief in light of other approved plans for the area that provide insight into these policies.

- **Does the zoning relief requested provide a benefit to the immediate area and/or the community at-large, or only a benefit to the petitioner? Conversely, would the**

requested relief serve as a detriment to the surrounding area while providing the petitioner with a benefit not available to other, similarly placed, property owners?

Based upon the court decisions mentioned above, it appears intuitive that if the requested zoning relief provides a benefit only to the petitioner while being detrimental to the surrounding property owners, a spot zoning situation may be present. More difficult to determine might be cases in which the positive benefit to the petitioner is clear, but any positive benefit to the surrounding area or community remains unclear.

The lack of a positive benefit would not demonstrate spot zoning on its face, but staff should consider whether or not the provision of the relief would create a zoning pattern that is other than homogeneous, compact and uniform. Staff should also consider whether the granting of the relief would place owners of similar parcels not addressed by the case at a disadvantage. If it would, staff should consider the effect the relief might have on zoning consistency and therefore whether or not it is for the public good.

- **Does the parcel of such size that it might be indicative of spot zoning?**

As the cases discussed above indicate, assessing the presence or absence of spot zoning based upon parcel size is particularly problematic as parcel size is not in and-of-itself a causal factor for inappropriate spot zoning. However, since spot zoning often occurs on small parcels or small groups of parcels, the size of the property under consideration should be considered.

One useful approach may be that suggested by Zeigler, above, and staff consider the extent to which factors are presented by the case indicating that any reclassification should have embraced a larger area containing the subject parcel rather than that parcel alone. If the staff analysis indicates that the reclassification of a larger area would be more appropriate, inappropriate spot zoning may be present.

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